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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,149	11/26/2003	Jake Rachal	12871/1	9233
26646	7590	04/20/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004				PATEL, VINOD D
ART UNIT		PAPER NUMBER		
		3742		

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/723,149	RACHAL, JAKE	
	Examiner Vinod D. Patel	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 January 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4,6-8 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 November 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED OFFICE ACTION

INTRODUCTION

1. This application/control number 10/723,149 has been examined. This is final action on the merits of the claimed invention. The application has claims 1-4, 6-8 and 18 are pending.

Response to Amendment

2. Response to non final action is acknowledged.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the heating element having a heated surface that is flat across width of the heated surface that is positioned between the surface of the base portion and the tips of the bristles as claimed in the claim1, the power source includes battery as claimed in claim 4, curved heating element as claimed in claim 6, heating element positioned between rows of bristles as claimed in claim 7, must be shown or the feature(s) canceled from the claim(s). The examiner maintains that a drawing showing a substantially flat heated surface is essential for a proper understanding of the invention and must be shown, especially since applicant argues that this limitation is point of novelty. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure

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must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-4, 6-8 and 18 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "the heating element 20 that is substantially oblong, e.g. elongated when viewed from above and that is substantially flat when viewed in cross section" (specification page 5, lines 12-14), does not reasonably provide enablement for "the heating element having a heated surface that is flat across a width of the heated surface" (claim 1, lines 8-9). The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Specification (page 5, line 12-14) discloses heating element is substantially flat when viewed in cross section but does not provide support for heating element having a heated surface that is flat across a width of the heated surface.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 6-7 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Gress (US4217915).

Gress discloses a hair straightening device as shown in the drawings, comprising a handle (3), a base portion (2) having a proximal end adjacent to the handle, a distal end and a surface (8), a plurality of bristles (1) having a tip, a curved heating element (12) extending between the proximal end and the distal end of the base portion and is positioned at a lateral edge of the base portion, the heating element having a heated surface (8) that is substantially flat (see figure 3) across a width of the heated surface and that is positioned between the surface of the base portion and the tips of the bristles, a power source including an electrical cord (5) with plug (6) configured to be plugged into an electrical outlet, the heating element is positioned between the rows of bristles.

8. Claims 1-4, 7 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hashimoto (US5064993).

Hashimoto discloses a hair straightening device as shown in the drawings, comprising a handle (2), a base portion (1) having a proximal end adjacent to the handle, a distal end and a surface, a plurality of bristles having a tip, a flat heating element (3), the heating element having a heated surface (See Figures 2A, B, C) that is flat across a width of the heated surface and that is

positioned between the surface of the base portion and the tips of the bristles, a power source (b) (batteries) for heating the heating element, plug (7) connected to battery holder (9) with batteries through a cord (8) can be inserted in the receptacle (6) to supply the power(see column 5, lines 17-21), wire (the heating element is positioned between the rows of bristles.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gress (US4217915) or Hashimoto (US5064993) in view of Kwan (US6053180).

Neither Gress or Hashimoto disclose a heating element configured to be heated to a temperature between 150⁰ F and 600⁰ F.

Kwan discloses hair styling apparatus comprising a hair styling apparatus an discloses (column 1, line 9-16) suitable temperature can be programmed according to different hair textures and hair styles desired, in short it depends on intended use of the device.

It would have been obvious to provide a heating element capable of generating temperature between 150⁰F and 600 ⁰F as taught by Kwan for the device of Gress or Hashimoto to obtain desired temperature for desired hair textures and styles.

Response to Arguments

Applicant's arguments filed on have been fully considered but they are not persuasive. Gress and Hashimoto disclose claimed invention. Gress discloses a hair straightening device as

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shown in the drawings, comprising a handle (3), a base portion (2) having a proximal end adjacent to the handle, a distal end and a surface (8), a plurality of bristles (1) having a tip, a curved heating element (12) extending between the proximal end and the distal end of the base portion and is positioned at a lateral edge of the base portion, the heating element having a heated surface (8) that is substantially flat (see figure 3) across a width of the heated surface and that is positioned between the surface of the base portion and the tips of the bristles, a power source including an electrical cord (5) with plug (6) configured to be plugged into an electrical outlet, the heating element is positioned between the rows of bristles.

Hashimoto discloses a hair straightening device as shown in the drawings, comprising a handle (2), a base portion (1) having a proximal end adjacent to the handle, a distal end and a surface, a plurality of bristles having a tip, a flat heating element (3), the heating element having a heated surface (See Figures 2A, B, C) that is flat across a width of the heated surface and that is positioned between the surface of the base portion and the tips of the bristles, a power source (b) (batteries) for heating the heating element, plug (7) connected to battery holder (9) with batteries through a cord (8) can be inserted in the receptacle (6) to supply the power(see column 5, lines 17-21), wire (the heating element is positioned between the rows of bristles.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod D. Patel whose telephone number is 703-308-5227. The examiner can normally be reached on 7.30 A.M. TO 4.00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VP

Vinod Patel 4/18/08
Vinod Patel
Patent Examiner
Art Unit 3742

Robin O. Evans
ROBIN O. EVANS
PRIMARY EXAMINER
4/18/05